

Hannu Vs. the State

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Court : Allahabad

Decided On : Aug-16-1954

Reported in : AIR1955All231; 1955CriLJ656

Judge : Asthana, J.

Acts : [Public Gambling Act, 1867](#) - Sections 5; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 79

Appeal No. : Criminal Revn. No. 1161 of 1954

Appellant : Hannu

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.N. Dwivedi, Adv.

Disposition : Application rejected

Judgement :

ORDER

Asthana, J.

1. This is an application in revision by one Hannu who has been convicted under Section 332, I. P. C., and Section 3, U. P. Gambling Act and has been sentenced

to six months rigorous imprisonment under Section 332, Penal Code, and to a fine of Rs. 150/- under Section 3, Gambling Act.

2. It was contended on behalf of the applicant that the Sub-Inspector who entered the house for search was not competent to do so as he had not been authorised under Section 5, U. P. Gambling Act. It appears from a perusal of the judgments of the lower Courts that the Superintendent of Police had authorised the Station Officer, Jhansi, under Section 5, Gambling Act, to enter the house of the applicant in order to make the search as he was satisfied that the house in question was used as a gaming house, that the warrant which was directed to the Station Officer was not executed by him personally but was endorsed by him in the name of another Sub-Inspector and it was that Sub-Inspector in whose name the warrant was endorsed who entered the house along with some constables and other persons to make the search, and that while the search was being made the applicant assaulted one of the constables who was making the search and inflicted injuries on him.

This question was also argued before the lower appellate Court and that Court relying on a decision of this Court reported in -- 'Emperor v. Kashi Nath', 30 All 60 (A), found that the contention had no force and the Station Officer to whom the warrant was originally directed was competent to endorse it in favour of another Sub-Inspector and the Sub-Inspector in whose favour the endorsement was made was competent to make the search of the house and, therefore, there was no illegality in the search. This decision was followed later on by this Court in -- 'Mahadeo v. Emperor', AIR 1920 All 150 (B). It was held in '30 All 60 (A)', that the provisions of Section 79, Criminal P. C., were applicable to a search under the Gambling Act and according to this provision the officer who had been nominated to make a search could delegate his Powers, to another Sub-Inspector for that purpose.

Learned counsel for the applicant relied on a decision of the Lahore High Court reported in --'Kundan Lal v. Emperor', AIR 1948 Lah 81 (C). In this case the above decision of the Allahabad High Court was considered but was not accepted as correct. The view of the Lahore High Court is that the provisions of the Code of

Criminal Procedure were not applicable to a search made under the Gambling Act and therefore a warrant which was required under Section 5, Gambling Act, to be executed by a particular police officer could not be executed by another police officer of the same rank as it could not be endorsed in favour of such officer. I have not been able to find anything in the Gambling Act which excludes the applicability of the provisions of the Code of Criminal Procedure to the searches made under the Gambling Act.

There is no doubt that where there are specific provisions in the Gambling Act which are inconsistent with the provisions of the Criminal P. C., than provisions of the Gambling Act have got to be followed but where there is no inconsistency between the two provisions or where the Gambling Act is silent the provisions of the Code of Criminal Procedure will be applicable to the proceedings under the Gambling Act. I am inclined to follow the two decisions of the Allahabad High Court in preference to the Lahore decision. I am not satisfied that the lower Courts in view of the above decision of the Allahabad High Court committed any mistake in arriving at the decision given by them.

3. There is no force in the present application. It is therefore rejected.

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